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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Lead Case No. 12-12020-mg Adv. Proc. No. 12-02065-mg
- - - - -x
In the Matters of:
RESIDENTIAL CAPITAL, LLC, et al.,
Debtors.
- - - - -x
DEMUSTCHINE,
Plaintiff,
- against -
RAHI REAL ESTATE HOLDINGS, LLC,
Defendant.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

July 10, 2013
10:04 AM

B E F O R E:
HON. MARTIN GLENN
U.S. BANKRUPTCY JUDGE

1
2 Status Conference RE: Dispute in Reference to Confirmation
3 Order of FGIC Settlement.
4

5 Doc# 2511, (CC: Doc no. 3343) Status Conference Re: Motion to
6 Approve Motion By Ally Financial Inc. and Ally Bank for an
7 Order Enforcing the Automatic Stay Pursuant to 11 U.S.C. 362
8 (a)(3) By (1) Enjoining Prosecution of Alter Ego and Veil
9 Piercing Claims in the Class Action Entitled Landon Rothstein,
10 Et Al. v GMAC Mortgage, LLC Et Al., and (2) Declaring Such
11 Claims Void Ab Initio
12

13 (CC: Doc# 3374, 3375) Evidentiary Hearing RE: Debtors Motion
14 for Entry of an Order to Permit the Debtors to Continue Using
15 Cash Collateral
16

17 (CC: Doc# 3848) Motion for Relief from Stay as to the property
18 located at 11941 Delvin, Sterling Heights, MI 48313.
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Adversary proceeding: 12-02065-mg DeMustchine v. RAHI Real
Estate Holdings, LLC
Doc# 13 Case Management Conference

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RESIDENTIAL CAPITAL, LLC, ET AL.

11

1 P R O C E E D I N G S

2 THE COURT: Please be seated. We're here in
3 Residential Capital, number 12-12020. Mr. Goren?

4 MR. GOREN: Thank you, Your Honor. Todd Goren,
5 Morrison & Foerster, on behalf of the debtors. If you don't
6 mind, we'd like to go slightly out of order. We actually are
7 pleased to report that we do have a resolution on cash
8 collateral --

9 THE COURT: Okay.

10 MR. GOREN: -- after carrying it for months and
11 months. Since I know there are a few people waiting around to
12 deal with that and get out of here, we thought we'd take that
13 first.

14 THE COURT: That's fine.

15 MR. GOREN: If you'd like, I can bring up a copy of
16 the stipulation and we can e-mail it to chambers later.

17 THE COURT: Please. Thank you.

18 MR. GOREN: Effectively, Your Honor, what this
19 stipulation provides is we are terminating the use of cash
20 collateral except for the limited purpose of continuing to make
21 advances on mortgage servicing rights that remain in the
22 estates. These are deals that were excluded from the Ocwen
23 sale, and we're sort of slowly disposing of. The advances were
24 previously funded out of the revolver and junior secured bonds
25 collateral. So we're continuing the ability to fund those

1 subject to limits set forth in the stipulation.

2 And then really -- and in exchange, we're ceasing any
3 adequate protection payments to the junior secured bonds. And
4 the other key for the debtors and the committee was that
5 there's a full reservation of rights to seek to retroactively
6 go back and apply those expenses as part of the broader dispute
7 we're going to be dealing with in October.

8 THE COURT: Okay.

9 MR. GOREN: But given that, it didn't make sense for
10 anybody to stand up and have the fight now, we realize. So
11 that is, in effect, the resolution. I don't know if anyone
12 else would like to be heard on it.

13 THE COURT: Well, that's what I'm seeing. Anybody
14 else want to be heard?

15 MR. HOROWITZ: Good morning, Your Honor. Gregory
16 Horowitz on behalf of the creditors' committee. I just wanted
17 to take a minute to explain the significance of the reservation
18 of rights and maybe why it was so difficult and took so long to
19 get to an agreement.

20 As far as the committee is concerned, the most
21 important issue here is the issue relating to the junior
22 secured noteholders' claim for post-petition interest, of
23 whether the use of cash collateral, both in the past and going
24 forward would give rise to a diminution in value claim, as to
25 which they'd be entitled to adequate protection. That dispute,

1 which will be heard in connection with both the motion to
2 dismiss under our scheduling order and the phase 1 trial, is
3 one of the two or three most significant drivers of this post-
4 petition interest issue.

5 The JSNs are contending that because of the 506(c)
6 surcharge waiver, every dollar that has been spent on their --
7 from their cash collateral, whether it was related to the
8 preservation and maintenance and maximization of the value of
9 their collateral or not, should give rise to diminution in
10 value. And the committee and the debtors say no, to the
11 contrary, they're only entitled to adequate protection to the
12 extent that the use of their cash collateral has resulted in an
13 aggregate diminution in the value of their collateral. We'll
14 show during the phase 1 trial that in fact, the use of the cash
15 collateral has resulted in an increase in the value of their
16 collateral.

17 So as I said, the issue's going to be teed up, both
18 the legal standard issue in the motion to dismiss and factual
19 issues in the phase 1 trial. And I think the parties agreed it
20 didn't make sense to prematurely tee that up in connection with
21 a cash collateral fight, particularly given that the debtors
22 have advised the committee there's sufficient unencumbered cash
23 to fund operations at least through the anticipated
24 confirmation hearing and hoped-for effective date.

25 With that in mind, we wanted to negotiate an agreement

1 that allowed us to fund from -- operations from the
2 unencumbered cash while still fully preserving both sides'
3 ability to argue that -- as to what the situation should be.

4 There's a sentence in paragraph 5 of the stipulation
5 that I just want to specifically highlight. It's the second
6 sentence. It says, "The debtors expressly reserve the right to
7 seek on appropriate notice authorization to replenish from cash
8 collateral any unencumbered funds," basically the next
9 language is used for the purposes that were originally
10 contemplated in the cash collateral order, "as those such
11 expenses have been paid in the first instance from cash
12 collateral."

13 So I just wanted to highlight for Your Honor, we think
14 that's the most important reservation of rights here,
15 notwithstanding that the ongoing operations including expenses
16 related to the JSN's collateral are going to be funded now in
17 largest part from unencumbered cash. We're reserving our right
18 to argue the diminution in value of adequate protection issue,
19 as though those amounts had been spent from cash collateral.

20 THE COURT: Thank you, Mr. Horowitz.

21 Mr. Uzzi, did you want to be heard?

22 MR. UZZI: Good morning, Your Honor. For the record,
23 Gerard Uzzi of Milbank, Tweed, Hadley & McCloy, on behalf of
24 the ad hoc group of junior secured noteholders.

25 Your Honor, the issue of adequate protection and what

1 will constitute adequate protection has been teed up for the
2 adversary proceeding. So notwithstanding the statements on the
3 record here, I'm not going to address that issue. It's for the
4 adversary proceeding. I just want to say, the reservation of
5 rights in here speaks for itself. We negotiated it. It means
6 what it means.

7 There's reciprocal reservation of rights too. So I
8 don't want the record to be expanding what we've spent a long
9 time negotiating, Your Honor. Other than that, we consent to
10 the entry of this order, unless you have questions for me, Your
11 Honor. I don't have anything else to say.

12 THE COURT: I don't. Anybody else want to be heard?
13 Mr. Goren?

14 MR. GOREN: Thank you, Your Honor.

15 THE COURT: Well --

16 MR. GOREN: We'll e-mail it over to chambers, and I'll
17 just turn it over to my partner, Charles Kerr for the FGIC
18 status.

19 THE COURT: All right. Just give me a chance to look
20 at it, see whether I have any questions before.

21 (Pause)

22 THE COURT: Without me searching back, could you tell
23 me what the significance of the May 14th, 2013 date in
24 paragraph 5 is?

25 MR. GOREN: That was the date that it was -- I think

1 the motion was origin -- we had use of cash collateral to fund
2 all the expenses up to that date. That was the date where it
3 ceased, and we agreed to a more limited use of cash collateral.
4 So and that was then built into the preceding extension
5 stipulation. So we just wanted to make it clear that it
6 reverted back to that date.

7 THE COURT: Okay. All right. I'll -- I've read it
8 over quickly. I didn't see any problem. But I'll look at it
9 more --

10 MR. GOREN: Okay.

11 THE COURT: -- carefully.

12 MR. GOREN: We'll have it e-mailed to chambers.

13 THE COURT: Thank you.

14 MR. GOREN: And I will turn the podium over to my
15 partner, Charles Kerr, for the FGIC status conference.

16 THE COURT: Thank you.

17 MR. HOROWITZ: Your Honor, may I be excused?

18 THE COURT: Certainly, Mr. Horowitz, Mr. Uzzi.

19 MR. UZZI: Thank you, Your Honor.

20 THE COURT: Nice to see you again, Mr. Uzzi.

21 Go ahead, Mr. Kerr.

22 MR. KERR: Good morning, Your Honor. Charles Kerr of
23 Morrison & Foerster on behalf of the debtors. I'm here on the
24 status conference on the debtors' motion pursuant to 9019 for
25 approval of the settlement agreement involving the FGIC. That

1 was docket number 3929.

2 Your Honor, I can give any information Your Honor
3 wants about the update of the status of the proceeding. But I
4 know Your Honor was specifically interested to speak about the
5 confidentiality agreement the parties --

6 THE COURT: Well --

7 MR. KERR: -- had been --

8 THE COURT: -- I want to put that to rest.

9 MR. KERR: And that's fine, Your Honor. So if you --
10 may I turn to that for a second?

11 THE COURT: Yes, you can.

12 MR. KERR: Okay. We had been working with all parties
13 to try and reach resolution of a confidentiality agreement.
14 And we had actually sent out a draft originally on June 14th.
15 I think my letter incorrectly said it was June 23rd. It was
16 even earlier than that.

17 We've exchanged a variety of drafts, had meet-and-
18 confers, and we unfortunately were not able to reach a
19 consensus. And so we told the parties before the holiday that
20 because depositions were beginning, we needed to get it
21 resolved, and we submitted to Your Honor what we thought was
22 appropriate.

23 There's been various correspondence both from Willkie
24 Farr, from Freddie Mac's counsel, whatever. And I think
25 there's a couple of discrete issues that have been presented.

1 And let me just highlight those issues for Your Honor, because
2 I think they're --

3 THE COURT: And I -- let me just -- I've read all the
4 correspondence.

5 MR. KERR: Okay. And those -- so let me just --

6 THE COURT: And the competing versions of the proposed
7 confidentiality order.

8 MR. KERR: So let me just deal with those four issues.
9 And one of them I'm actually going to refer to FGIC's counsel
10 to deal with. But the first one has to do with language that
11 the objectors wanted to include in the confidentiality
12 stipulation essentially providing them a screen order, allowing
13 them to continue to trade --

14 THE COURT: Yes, the two -- let me make clear. The
15 two issues that -- I'm not precluding you from talking about
16 others, but the two issues I definitely want to hear about is
17 the ethical screen and the use of discovery in the state court.

18 MR. KERR: Well, let me focus on those two issues,
19 Your Honor.

20 THE COURT: All right.

21 MR. KERR: In terms of the ethical screen, when we
22 were negotiating this, this was a stipulation. And they had
23 included that proposed language. We said to them we, as the
24 debtors, didn't feel that was something we should be
25 stipulating to in that form. We said, instead, we thought that

1 if you wanted a screen order, and that's fine, you should make
2 a motion as other parties have done. And we -- like Allstate
3 had made a motion, I believe, earlier on. And that put us on
4 notice, allows anybody else to come in and comment on it and
5 whatever.

6 We proposed that to them a couple weeks ago. They
7 have not done that. And that language has now been added back
8 into the draft they sent to Your Honor on Monday. I think it's
9 paragraph 3(h). So Your Honor, on that issue, what we -- we
10 just don't believe that's appropriate for this confidentiality
11 stipulation; it should be done by separate motion that way.

12 With respect to the interplay with discovery in this
13 proceeding and the rehabilitation hearing before Justice Ling-
14 Cohan, on that, Your Honor, I actually would like to turn that
15 issue over to FGIC's counsel. We're not a party to the
16 rehabilitation court. I think that's an issue that is of
17 concern to parties who are in that proceeding. So if I may,
18 could I ask --

19 THE COURT: In a moment, you can.

20 MR. KERR: Okay.

21 THE COURT: Okay? Let me ask you, with respect to the
22 screen, does the debtor object to a separate order approving
23 the screen? I mean, I think the reason that -- why it would
24 arguably seem appropriate to include it in the confidentiality
25 order, it's who can get the stuff -- who can get to see the

1 stuff. All right? And what they're saying is if we establish
2 an appropriate ethical screen, that the people who are not on
3 the trading side can have access to the information.

4 MR. KERR: Our position is, Your Honor, we don't
5 object to a screen order in the appropriate place and
6 appropriate time. What led to this was the fact that this
7 was -- although we sent to Your Honor a form of an order
8 because the parties couldn't agree, this was going to be part
9 of a stipulation.

10 THE COURT: Okay.

11 MR. KERR: And we were uncomfortable -- and I
12 frankly -- I think --

13 THE COURT: Well, put it this way. It's now going to
14 be in the form of an order.

15 MR. KERR: Okay. And Your Honor, again, from the
16 debtors' point of view, what we thought was the better
17 procedure --

18 THE COURT: Okay, but let's -- I want to put that
19 aside, okay?

20 MR. KERR: Okay.

21 THE COURT: I'm entering an order.

22 MR. KERR: Okay. Your Honor, we --

23 THE COURT: Stop -- stop. I'm entering an order,
24 okay? Do you object to the language that they've proposed for
25 the ethical screen?

1 MR. KERR: As they propose in 3(h), we do not, Your
2 Honor.

3 THE COURT: Okay, all right.

4 MR. KERR: So if I -- turning then to the issue about
5 the interrelationship with the FGIC --

6 THE COURT: Right.

7 MR. KERR: -- rehabilitation proceeding, if I can turn
8 it over to maybe Mr. Sidman, who I think is really -- has the
9 issue.

10 THE COURT: That's fine, Mr. Kerr.

11 MR. SIDMAN: Good morning, Your Honor. Howard Sidman,
12 Jones Day for FGIC. The issue is sort of, I think, fairly laid
13 out in the letters to Your Honor. It is whether the parties
14 who are disputing the 9019 motion can use the discovery that
15 they've received in connection with the 9019 motion in
16 connection with the ongoing rehabilitation proceeding.

17 As the letters also indicate, there is a pending
18 dispute. In fact, counsel for Freddie Mac has requested that
19 the -- sent a letter to Justice Ling-Cohan of the -- who is
20 supervising the rehabilitation action, requesting that Her
21 Honor allow this discovery in connection with the 9019 motion
22 to be used in connection with the rehabilitation proceedings.

23 THE COURT: Let me -- one thing I want to be clear
24 about.

25 MR. SIDMAN: Yeah.

1 THE COURT: Not all documents or depositions in
2 connection with the contested matter before me involves
3 confidential information. Do you agree with that?

4 MR. SIDMAN: Yes, Your Honor.

5 THE COURT: Okay. So the -- anything that's not
6 subject to confidentiality, I'm not imposing any -- there's
7 nothing that I know of that would impose limits on the use of
8 nonconfidential information in this or other proceedings. Do
9 you agree with that?

10 MR. SIDMAN: I would agree with that -- I would agree
11 with that --

12 THE COURT: All right.

13 MR. SIDMAN: -- Your Honor.

14 THE COURT: So the issue is with respect to things
15 that are designated as confidential --

16 MR. SIDMAN: Right.

17 THE COURT: -- whether they get to get used just here
18 or there as well. Fair statement?

19 MR. SIDMAN: Yes, Your Honor. With one caveat, that
20 to the extent that there's any -- that Justice Ling-Cohan
21 permits us to use -- the parties, in connection with their
22 rehabilitation proceeding to use any discovery, that's for her
23 to -- that's for her to decide.

24 THE COURT: Absolutely.

25 MR. SIDMAN: So that's the only caveat. But I agree

1 with what you're saying generally, Your Honor.

2 THE COURT: Okay. All right. So what's your position
3 in this issue?

4 MR. SIDMAN: My position is we should not have -- this
5 issue is premature. This issue is squarely in front of Justice
6 Ling-Cohan. If she decides that the parties can use this
7 discovery in connection with the rehabilitation proceeding, we
8 will be happy to work with counsel for Freddie Mac to make sure
9 there is no duplicative discovery and make sure that the
10 provisions of the confidentiality agreement extend to the
11 rehabilitation proceeding. But right now, this issue is
12 squarely in front of --

13 THE COURT: Okay.

14 MR. SIDMAN: -- the court --

15 THE COURT: Let me just say, in terms of the effect, I
16 don't disagree with you.

17 MR. SIDMAN: Okay.

18 THE COURT: But in terms of an order, I do disagree.
19 If I enter -- I mean, it's very common, most common, for
20 documents that are marked as confidential in discovery in my
21 case, are limited to use in my case. Let me say right now, I
22 don't abide overdesignation of confidential material. And so
23 if people have a gripe about whether something has been labeled
24 confidential or not, there's a mechanism to raise that issue.

25 MR. SIDMAN: Yes, Your Honor.

1 THE COURT: Okay. With that said, if an order I enter
2 says that confidential material may only be used in connection
3 with this case, that doesn't prevent Justice Ling-Cohan from
4 entering an order saying I permit discovery from the same
5 parties for the same information, and it doesn't relieve them
6 of the obligation of producing the materials in connection with
7 the state court proceeding.

8 But with all due respect for her, or the same would
9 apply to me if she entered it, I can't order that things that
10 were marked as confidential in a proceeding before her can be
11 used before me.

12 MR. SIDMAN: Agreed, Your Honor.

13 THE COURT: Because the effect may be the same thing,
14 right, because just ask the same -- ask the same question, get
15 the same material from the same party, subject to whatever
16 restrictions Justice Ling-Cohan imposes on it. But I don't
17 think I've ever entered an order specifically authorizing the
18 use of confidential information in a proceeding other than the
19 one before me. Okay? So you're -- anything else you want to
20 add at this point?

21 MR. SIDMAN: No, Your Honor.

22 THE COURT: Okay.

23 MR. SIDMAN: Thank you. I've said enough.

24 THE COURT: Let me hear first from anybody who wants
25 to speak as to the ethical screen issue, and then we'll get to

1 the --

2 MR. KERR: Your Honor, just if I may with --

3 THE COURT: Go ahead, Mr. Kerr.

4 MR. KERR: -- one of the points. I just went back and
5 read the language. And in their 3(h) --

6 THE COURT: Yes.

7 MR. KERR: -- they've done it's fine. But in
8 incorporating 3(h) they took out some language in 3(b) in our
9 draft which allowed any receiving party to see it if they
10 signed the appropriate stipulation at the end of the --

11 THE COURT: Yeah, you had that language in yours that
12 said if anybody signed Exhibit A, they could see it.

13 MR. KERR: Correct. So at least with the debtor and
14 any other party that aren't faced with those screen issues, we
15 just want to make sure that they can do that as well --

16 THE COURT: Yes.

17 MR. KERR: -- and we'd like to have that in the order.

18 THE COURT: Okay.

19 MR. KERR: Thank you.

20 THE COURT: All right.

21 MS. EATON: Good morning, Your Honor. Mary Eaton from
22 Willkie Farr --

23 THE COURT: Good morning.

24 MS. EATON: -- on behalf of the investors. Just
25 briefly with respect to the screening order. I don't think

1 that there's much of an issue except with respect to the impact
2 of 3(b). In deleting that provision it was not our intent to
3 preclude the debtors or anyone else from getting access to
4 information that was marked confidential, but rather to prevent
5 access to information that was marked as attorneys'-eyes-only.
6 Our thought was, there are other provisions in the order that
7 the debtors submitted to Your Honor that covered that
8 adequately but --

9 THE COURT: I'll tell you. I said I don't have a lot
10 of tolerance for overdesignation of confidential information.
11 I have even less tolerance about attorneys'-eyes-only. So --

12 MS. EATON: Indeed, Your Honor. And that's why we
13 ourselves proposed a provision that the attorneys'-eyes-only
14 category should be used sparingly and reasonably. We have no
15 intention of designating a whole swath of materials as
16 attorneys'-eyes-only. But there is a core set of materials
17 that go to the heart of my client's business that frankly we
18 don't think should be let out into the universe even --

19 THE COURT: Well, it's not let out into the universe.
20 I mean, if it's designated as confidential, and anybody who
21 gets to see it has got to sign that Exhibit A confidentiality
22 agreement, what's wrong with that?

23 MS. EATON: Well, there's nothing per se wrong with
24 it, Your Honor. We don't see the need and -- that those
25 documents should be going to businesspeople at a variety of

1 institutions that is highly proprietary and confidential.

2 Indeed, I don't understand the need for the information they're
3 requesting in the first place, which relates to specific
4 decisions --

5 THE COURT: Give me an example of what you think is
6 appropriately designated attorneys'-eyes-only.

7 MS. EATON: The only category that we have in mind,
8 Your Honor, is the category of information that -- documents
9 and testimony, I assume as well -- that relates to specific
10 decisions to buy or sell ResCap-related securities. We don't
11 even think that information is relevant to the issue at hand,
12 which of course, is whether the trustees --

13 THE COURT: Why is information -- historical
14 information about decisions to buy or sell ResCap securities
15 appropriately designated attorneys'-eyes-only? It's not future
16 plans. It's -- you've filed a proof of claim?

17 MS. EATON: We did not, Your Honor.

18 THE COURT: You didn't. Okay.

19 MS. EATON: I mean, it would depend on -- I suppose,
20 on how historical --

21 THE COURT: Interesting that you didn't file a proof
22 of claim.

23 MS. EATON: I don't think that we were -- I don't know
24 the details of that, Your Honor. But I don't think that we
25 were in a position to do that. But in any case, the answer to

1 Your Honor's question is it depends on how historical it is,
2 because certain of these documents, in reviewing the documents
3 that the debtors and the trustees have requested, documents
4 that were responsive to their requests as written, there are a
5 number of documents that are responsive, they do deal with
6 decisions whether to buy or sell the securities at issue, but
7 they also contain a host of -- a variety of other information
8 about trading strategies and the like which we think, frankly,
9 aren't relevant here at all, and if they do need to be
10 produced, should be protected as attorneys'-eyes-only.

11 That is the only category at issue. That issue,
12 parenthetically, did not arise until two day before -- I guess,
13 it would be more accurate to say it did not crystallize, that
14 dispute over whether those documents should be produced or not,
15 until two days before the proposed order was submitted by the
16 debtors. And that's why the whole dispute about whether to
17 include an attorney's eyes only category came up --

18 THE COURT: I'm less concerned about --

19 MS. EATON: -- late in the game.

20 THE COURT: -- the timing, but I've got to decide
21 it -- I'm deciding it now. That's --

22 MS. EATON: So in brief, Your Honor, we understand the
23 need not to overdesignate. We don't have any intention of
24 overdesignating.

25 THE COURT: So when were these -- when's the most

1 recent trade that would be covered by the discovery request?

2 MS. EATON: I believe they're still trading to this
3 day, Your Honor. So, I mean, again, you may be right about
4 historical information. It's perhaps stale and it would not be
5 harmful if it were disclosed to others, but --

6 THE COURT: Well, the problem I have is that you can
7 just go ahead and designate it all attorneys'-eyes-only, and
8 then I'm going to have a fight about -- because I don't think
9 that's appropriate, okay? I want to make that crystal clear.

10 MS. EATON: Understood, Your Honor.

11 THE COURT: Mr. Kerr, what's your view on the
12 attorneys'-eyes-only provision?

13 MR. KERR: Your Honor --

14 THE COURT: Their current trading strategy, whether
15 it's attorneys'-eyes-only, but maybe professionals'-eyes-only.
16 I mean, if you're using a financial advisor in connection with
17 the preparation for the hearing, restricting it to attorneys is
18 not right.

19 MR. KERR: Your Honor, our view is -- for the very
20 same reason as you, Your Honor, it shouldn't be restricted that
21 way. But here's our concern. This -- it was really just
22 getting an order in place.

23 THE COURT: Sure.

24 MR. KERR: This -- we have been trading drafts for
25 weeks that have not been -- have been --

1 THE COURT: Well, just address specifically the
2 attorneys'-eyes-only limitation?

3 MR. KERR: Excuse me, Your Honor?

4 THE COURT: Just address specifically the --

5 MR. KERR: I --

6 THE COURT: -- attorneys -- the appropriateness of an
7 attorneys'-eyes-only restriction.

8 MR. KERR: With respect to the documents she's
9 identified, Your Honor, I don't necessarily believe that that
10 has to be attorneys'-eyes-only. If we build in an attorneys'
11 eyes -- I agree with Your Honor, it should be extremely narrow.
12 We've not designated anything --

13 THE COURT: I've entered orders before --

14 MR. KERR: -- attorneys'-eyes-only.

15 THE COURT: -- and you all have these documents in
16 your precedent files that have confidential and highly
17 confidential.

18 MR. KERR: We --

19 THE COURT: Highly confidential doesn't mean
20 attorneys'-eyes-only. It may be more restrictive about who can
21 see it. I'm not -- Ms. Eaton, I'm -- if you really mean
22 attorneys'-eyes-only, I'm not going to approve that. Okay?
23 Because on a matter of this complexity -- potential
24 complexity -- it may not -- everybody may say it's simple, but
25 I don't want to find a week from now that this fight is back

1 again.

2 You all have financial advisors and other litigation
3 support professionals. And if you really mean attorneys'-eyes-
4 only, no. Okay? If you want to designate a category of highly
5 confidential and so that counsel can have an appropriate person
6 at their client and a professional to review it with tighter
7 restrictions, that would seem appropriate to me. But I'm not
8 going to approve attorneys'-eyes-only, okay, for this .

9 MR. KERR: And, Your Honor, we would be fine with
10 that. It's just then a question of building that into this
11 agreement --

12 THE COURT: Yes, I understand.

13 MR. KERR: - and --

14 THE COURT: Quickly too.

15 MR. KERR: Quickly. But that will just take some --
16 take a day or something like that. But we're --

17 THE COURT: It shouldn't take more than that.

18 MR. KERR: -- willing to take it --

19 THE COURT: Okay? You all have copies in your
20 precedent files of confidentiality orders that have -- that
21 they usually -- they'll have three: confidential, highly
22 confidential, and some attorneys'-eyes-only. I don't like the
23 attorneys'-eyes-only. Okay? Because it can hamstring lawyers.
24 It may be wholly appropriate to restrict who besides the
25 lawyers gets to see it.

1 MR. KERR: Your Honor, we can quickly put a highly
2 confidential designation into the form of the agreement as it
3 is right now.

4 THE COURT: Okay. All right. Anybody else want to be
5 heard on this issue? Ms. Eaton, is there anything else you
6 want to say on this point? You -- I'm sure you've got
7 precedent files that have confidential, highly confidential,
8 that restrict -- have somewhat greater limitations or
9 restrictions on highly confidential, but it doesn't say only
10 the lawyers.

11 MS. EATON: I think the answer to your question, Your
12 Honor, is of course that the definition -- and it was by -- I
13 suppose in my haste to get a draft to you, I could have used
14 more precise language. But if you look at the definitions that
15 we included, it is professional-eyes-only, or attorneys'-eyes-
16 only, meaning --

17 THE COURT: All right.

18 MS. EATON: -- the same thing. So it's already in
19 there. And the principle that it should be shared with
20 professionals, obviously, we don't disagree with that. We can
21 simply change it to highly confidential, professionals' --

22 THE COURT: Okay, I'm going to leave it --

23 MS. EATON: -- eyes only. It makes no difference to
24 us.

25 THE COURT: Okay. You all need to go back to the

1 drawing board. I don't view these as major changes. Okay?

2 And I'm not hung up. If it says -- I mean, I wish you wouldn't
3 just call it attorneys' eyes -- if it's professional-eyes-only
4 or high -- this you'll fix, okay?

5 MS. EATON: We will, Your Honor.

6 THE COURT: All right. Now, let me hear from anybody
7 about the discovery being used in the state court.

8 MR. CARNEY: Good morning, Your Honor. Michael Carney
9 from McKool Smith on behalf of Freddie Mac. I think the first
10 thing that I --

11 THE COURT: And I read your correspondence with both
12 me and the state court judge.

13 MR. CARNEY: Thank you. And so I -- the first thing I
14 would like to point out is that we are not asking you to
15 approve the use of 9019 motion discovery in the state court.
16 All we're asking for is that if --

17 THE COURT: Yes, you are.

18 MR. CARNEY: -- Judge --

19 THE COURT: You're asking me to approve it subject to
20 what Judge Ling-Cohan does. Okay? That's what you've asked
21 for. All right.

22 MR. CARNEY: Well, I don't view it as that. I just
23 think -- I mean, I view it as a time saver. Because if she
24 says we can use this discovery in her court, then do we just
25 have to come back to you and say, Your Honor --

1 THE COURT: No, you don't. You have to go to the
2 parties who produced the information and get it from them.
3 Okay?

4 Let me make it clear. I'm not entering an order that
5 approves the use of confidential -- of anything subject to a
6 confidentiality order that I enter, for use in any other
7 proceeding. Okay? That doesn't stop Justice Ling-Cohan from
8 permitting any parties before her to take discovery, and to
9 take discovery from exactly the same parties and ask for
10 exactly the same documents or different documents.

11 You agree that the standard -- I think you
12 acknowledged this in your correspondence -- the standard
13 applicable to approval of a 9019 settlement in this court, and
14 the approval of the FGIC settlement in the rehabilitation court
15 are different?

16 MR. CARNEY: We disagree. We disagree. How they're
17 different with FGIC and the rehabilitator obviously. But we
18 think the issues significantly overlap --

19 THE COURT: Well, then --

20 MR. CARNEY: -- in a lot of different ways.

21 THE COURT: -- wait. You think it's the same standard
22 in both courts?

23 MR. CARNEY: No, it's not the same standard.

24 THE COURT: Okay, different standard.

25 MR. CARNEY: But I think the issues -- different

1 standard, but the standard in this -- there's a standard in
2 each court, the issues can overlap, that we're discussing here.

3 THE COURT: You can convince Justice Ling-Cohan what
4 you believe the standard is before her, and she'll decide that.
5 Okay?

6 All right, anybody else want to be heard on this
7 issue?

8 All right. Here's what I'm going to do. I'm going to
9 enter a written order addressing solely the issue of use in the
10 other proceeding. Okay. And along the lines that I've just
11 said. Basically, I'm not permitting it. If Justice Ling-Cohan
12 believes discovery is appropriate in her proceeding, she'll
13 permit it. And any -- if she wants the same scope or different
14 scope, that's up to her. And anybody who produced documents in
15 the discovery here can't hold up the confidentiality order or
16 my order and say but Judge Glenn said no. I mean, she'll do
17 what she wants to do.

18 So I'm going to enter a written order about that.
19 It's not going to address the other issues that were raised
20 here. Mr. Kerr, you and Ms. Eaton -- you ought to be able to
21 resolve this issue. Because it's going to be an order I'm
22 entering, the ethical screen issue can go in the order. It's
23 my order. All right? So satisfy yourselves that the
24 language -- you said you didn't have a problem about the
25 particular language other than the reference back to language

1 that was deleted or something.

2 Make sure that that's in a form satisfactory to both
3 of you. You ought to be able to do that. You ought to be able
4 to show confidential documents to a deponent who signs the
5 Exhibit A agreement. That's pretty standard. All right?

6 MR. KERR: We will do that, Your Honor.

7 THE COURT: Okay. So I'll enter this written order
8 with respect to the one issue about use in the two proceedings
9 today. And as soon as you get a form of order in a consent
10 form, that will get entered.

11 MR. KERR: We will try to do that as quickly as we
12 possibly can --

13 THE COURT: Okay.

14 MR. KERR: -- Your Honor.

15 THE COURT: All right. Thank you very much.

16 MR. KERR: Your Honor, if there's anything else about
17 the FGIC proceeding you'd like to hear about, I'm more than
18 willing to tell you. But I don't think there's anything else
19 at issue right now.

20 THE COURT: I read Freddie Mac's letter -- or the
21 McKool Smith letter, and they've asked Justice Ling-Cohan to
22 extend her objection date. And she can do what she wants to
23 do. I know I did have a request yesterday to extend your time
24 to respond, and I declined to do that.

25 MR. KERR: We saw that, Your Honor. We understand

1 that.

2 THE COURT: Okay, thank you, Mr. Kerr.

3 MR. JOHNSON: Good morning, Your Honor. Michael
4 Johnson from Wells Fargo -- excuse me -- from Alston & Bird on
5 behalf of Wells Fargo.

6 We do have one issue related to the FGIC settlement
7 discovery that's going on right now. And I hate to have to
8 raise with Your Honor a scheduling issue, but time is running
9 out, quite frankly, Your Honor. Under the order that you have
10 recently entered, discovery -- fact discovery, that is -- is
11 set to close next Wednesday. And the settling parties have
12 been trying for the past two weeks to set a deposition
13 schedule. And we had a fair amount of difficulty doing that.
14 But we are making progress, I'm pleased to report, Your Honor.

15 There is one issue, though, where it appears we have
16 come to heads and we can't seem to get it resolved. We have
17 requested the depositions of each of the objecting parties, and
18 we only just this week got information on their availability.
19 And we were told that two of Ms. Eaton's clients are only going
20 to be made available on Monday.

21 Now, of course, under Your Honor's order, each
22 deposition is only four hours each. We're not happy about
23 having to take two of those witnesses on the exact same day,
24 even though we have been asking for two weeks for dates for
25 these depositions. But we are prepared to do it. All we have

1 asked Ms. Eaton is that she agree that they could go
2 sequentially, four hours each, on Monday, so that we don't have
3 to do them simultaneously, and ramp up two teams unnecessarily
4 to take what in essence will be very similar depositions.

5 Unfortunately, we have not been able to reach
6 agreement on that, Your Honor. And I'm only raising it today,
7 because time is running out.

8 THE COURT: Okay, Ms. Eaton?

9 MS. EATON: We were presented with the proposed
10 deposition schedule slotting in dates for all four of my
11 clients. I went back to all four of them trying to get dates
12 within the limited time period. I was told by two of my
13 clients that they were both available on Monday. I never in my
14 wildest dreams imagined that double tracking was going to pose
15 such an issue. But I proposed those dates. Just yesterday or
16 the day before I received word that that posed a problem for
17 the trustees.

18 I went back to my clients to see if they were
19 available on different days. It turns out that that is not the
20 case. I learned just before --

21 THE COURT: That what is not --

22 MS. EATON: -- the hearing --

23 THE COURT: -- they are or are not available on
24 different dates?

25 MS. EATON: They are not available on different days.

1 They're both available on the Monday. I learned just before
2 the hearing that the trustees would be amenable to having them
3 on the same date at different times. I'm not trying to be
4 obstructionist. I did not understand that that was acceptable
5 to them. I told Mr. Johnson before the hearing began that I
6 would --

7 THE COURT: It sounds like you've worked it out --

8 MS. EATON: -- go back to my clients --

9 THE COURT: -- you'll do one in the --

10 MS. EATON: -- and ask --

11 THE COURT: -- morning and one in the afternoon,
12 right?

13 MS. EATON: That's what I'm going to ask as soon as
14 were done.

15 So I think teeing up --

16 THE COURT: Not ask. That's what's going to happen.
17 They're not going to be -- you can -- you'll work out -- it's a
18 long day. And you can work it out so each of them has four
19 hours in the same day, but not the same four hours.

20 MS. EATON: Understood, Your Honor.

21 THE COURT: Okay? All right. Mr. Johnson, is that
22 satisfactory?

23 MR. JOHNSON: Thank you, Your Honor.

24 THE COURT: Okay.

25 MS. EATON: May I just briefly raise --

1 THE COURT: Yes, sure.

2 MS. EATON: -- one thing as well, Your Honor.

3 THE COURT: Yes.

4 MS. EATON: I'm, like Mr. Johnson, sort of hesitant to
5 bring up any kind of discovery stuff. But there have been a
6 number of issues that we've been grappling with over the last
7 couple of weeks with respect to document production and
8 whatnot. I'll cut to the chase which is --

9 THE COURT: Did you meet and confer and you can't
10 resolve it?

11 MS. EATON: We have met and conferred many times, and
12 we haven't been able to --

13 THE COURT: Okay. What's the issue?

14 MS. EATON: -- resolve these things. The issues
15 center on the application of various privileges. As things
16 stand now, we have not received, except for the Duff & Phelps
17 report that we had once and then had to give back and then got
18 again, and a prior version of that, essentially all we received
19 are publicly available documents.

20 So we have nothing -- we have nothing --

21 THE COURT: I don't understand what you're saying.

22 MS. EATON: We don't have -- no documents have been
23 produced to use apart from the Duff & Phelps report that's shed
24 any light on the basis for the trustees' determination that the
25 FGIC settlement agreement was in the best interests of the

1 investors, including my clients, or that they acted in good
2 faith in approving it. There have been many papers produced,
3 but not papers that go to that issue, including, for example,
4 there are no resolutions from any of these entities indicating
5 that whoever their governing bodies are approved the settlement
6 and for the reasons set forth in minutes or what have you. A
7 big nothing. And it seems --

8 THE COURT: Have you been told they -- the documents
9 don't exist? What have you been told?

10 MS. EATON: It would appear that --

11 THE COURT: Don't tell me what it appears. Just tell
12 me what you've been -- have you asked that specific question?

13 MS. EATON: We've been -- yeah. I've asked --
14 certainly asked that --

15 THE COURT: Did you ask that specific question? Are
16 there any resolutions --

17 MS. EATON: Yes, I asked that question --

18 THE COURT: And what were you told?

19 MS. EATON: -- yesterday -- yesterday at our last --

20 THE COURT: And what were you told?

21 MS. EATON: -- meet and confer. I did not receive a
22 response.

23 THE COURT: Okay, all right.

24 MS. EATON: So the issue is that it appears that a
25 wide variety of documents -- I don't know what, because I've

1 never seen them -- are being withheld on the basis of various
2 privileges, whether it's the attorney-client privilege, work
3 product privilege, or the mediation privilege. And we've
4 raised this issue with Your Honor before. We have concerns
5 that the attorney-client privilege, at least, does not apply in
6 these circumstances, because the trustees in negotiating --
7 that's what they were doing -- the FGIC settlement agreement,
8 were acting on behalf of the beneficiaries of the trust, that
9 is, my clients.

10 And under the fiduciary exception to the attorney-
11 client privilege, it's our view that therefore they are not
12 entitled to withhold advice about the discharge of those
13 fiduciary duties. And we've raised it before. And what we're
14 requesting, Your Honor, is that we have an opportunity to
15 address that issue in whatever way Your Honor chooses, but more
16 formally, so that we can draw the Court's attention to what we
17 believe to be the relevant case law and get this issue
18 resolved.

19 Because it's those documents -- essentially we don't
20 have any more information apart from the Duff & Phelps report,
21 that we had at the beginning of discovery.

22 THE COURT: Okay. Mr. Johnson, what documents did the
23 trustees rely upon in -- consider or rely upon in determining
24 to approve the settlement? And are you withholding any of them
25 on privilege grounds?

1 MR. JOHNSON: Your Honor, the trustees certainly did
2 consider the Duff report. It's not the case that we -- the
3 trustees have only produced public documents, as Ms. Eaton has
4 represented to the Court. The trustees have disclosed
5 nonpublic documents as well.

6 THE COURT: This --

7 MR. JOHNSON: There have been no resolutions --

8 THE COURT: But my question is this. What documents
9 did the -- are there documents that the trustees considered in
10 reaching their decision to approve the settlement which you are
11 withholding on grounds of privilege?

12 MR. JOHNSON: Your Honor, I think the answer to that
13 question would be yes.

14 THE COURT: Okay.

15 MR. JOHNSON: But they have been logged pursuant to
16 the directive that Your Honor gave I think the last time we
17 were in front of you.

18 THE COURT: Okay.

19 MR. JOHNSON: And Ms. Eaton pointedly did not mention
20 to Your Honor that she has those logs now.

21 THE COURT: Okay.

22 MR. JOHNSON: If she would like to tee up and issue
23 about the attorney-client privilege, we agree that a more
24 formal setting than this is appropriate, so we're not sure why
25 it's being raised now. She has the logs. She's already cited

1 to us some authority that she thinks stands for the proposition
2 that she gets to pierce the attorney-client privilege here.
3 We've cited our authority to her that we think it doesn't.

4 So the issue is ripe for her to tee up. This, I don't
5 think, Your Honor, is the forum.

6 THE COURT: I'm not deciding it now. I'm just -- when
7 I'm going to decide it -- if you -- you obviously -- she's
8 raised the issue with you. You've each cited authority to each
9 other. You're not bending from your position that -- what's
10 the volume of documents? First let me ask you that.

11 MR. JOHNSON: Your Honor, I can only speak for Wells
12 Fargo. I don't think the volume for Wells Fargo is very
13 significant in terms of what has been logged. So I don't think
14 Your Honor --

15 THE COURT: Can you tell me approximately how many
16 pages?

17 MR. JOHNSON: Your Honor, I can only hazard a guess.
18 I'm afraid I can't. But I don't think, Your Honor, this is an
19 issue where the Court would be obligated to look at individual
20 documents. This is an issue --

21 THE COURT: Oh, I usually do. I mean, I -- I will
22 ask -- all this happens very quickly here. Okay? I'm going to
23 give you a date next week when I expect letter briefs
24 addressing -- if the only issue is the fiduciary exception --

25 MR. JOHNSON: I believe that's the case, Your Honor.

1 THE COURT: Okay.

2 MR. JOHNSON: Which is why I don't think it would be
3 necessary for Your Honor to review individual documents. I
4 think it's, in essence, an overarching issue that can be
5 briefed without the need to review --

6 THE COURT: I don't know. I typically --

7 MR. JOHNSON: -- many --

8 THE COURT: -- look -- wind up looking at the
9 documents in camera as well when --

10 MR. JOHNSON: Sure, we can make them available.

11 THE COURT: This gets resolved very, very quickly.
12 How many days do you want to get your letters out to -- each of
13 you. Is there any -- who else -- are the two of you involved
14 in this too? Come on up.

15 MS. KAHAN: Your Honor, Rebecca Kahan from Dechert,
16 for Bank of New York Mellon.

17 MR. KOTWICK: And Mark Kotwick of Seward & Kissel, on
18 behalf of U.S. Bank.

19 THE COURT: And you've created a privilege log? Are
20 there documents that your trustees considered in reaching their
21 decision, which you've also withheld on grounds of privilege?

22 MR. KOTWICK: We logged all the communications between
23 our client and ourselves regarding the FGIC settlement, to the
24 extent --

25 THE COURT: I know. But can you answer my question?

1 Are there documents that your client considered in determining
2 to approve the settlement that you're withholding on grounds of
3 privilege?

4 MR. KOTWICK: There would probably be some documents
5 that yes, they considered.

6 THE COURT: Okay.

7 MS. KAHAN: Yes, Your Honor, there are.

8 THE COURT: Okay.

9 (Pause)

10 THE COURT: Okay. I'm going to give -- I want
11 simultaneous letter briefs not to -- and to extent the trustees
12 can join in one letter brief, that would be appreciated --
13 simultaneous letter briefs not to exceed ten pages in length.
14 They can be single spaced letters, by noon Tuesday, July 16th.
15 And trustee's counsel shall provide the Court with the
16 documents that are being withheld on this privilege for in
17 camera review at the same time that they deliver their letters.
18 And then you can all appear on Wednesday the 17th at 3 o'clock,
19 and I'll resolve the issue then.

20 Am I clear?

21 MR. KOTWICK: You are clear and we'll work with
22 Willkie to meet that schedule. The only --

23 THE COURT: I don't know what you have to meet with
24 the -- work with them to meet the schedule. You have to get a
25 letter brief addressing the issue. You say you've exchanged --

1 you've had a meet-and-confer. You've each shared citations
2 with each other. You need to give me -- when I said a maximum
3 length of a letter, it certainly can be shorter.

4 It's not the first time I've dealt with the fiduciary
5 exception to attorney-client privilege. But I want the
6 documents delivered for in camera review. I'll look at the
7 letters first and decide if I need to look at the documents.
8 But we're on a fast schedule. This all needs to get resolved
9 very quickly.

10 MR. KOTWICK: I understand that. My only point, Your
11 Honor, was that we've got double tracked depositions next
12 Wednesday, including --

13 THE COURT: You've got a big firms.

14 MR. KOTWICK: -- stuff out of town.

15 THE COURT: You've got big firms.

16 MR. KOTWICK: No, no, no. That's -- and I said we
17 will work with them and make sure that we get everything
18 covered.

19 THE COURT: Okay. That's going to be the schedule.

20 All right. Any other issues on FGIC? Mr. Kerr?

21 MR. KERR: Your Honor, if there's no other issues and
22 I don't think there are, I'd just simply request that I can be
23 excused so that I can turn this over to --

24 THE COURT: You --

25 MR. KERR: -- my --

1 THE COURT: -- you certainly can.

2 MR. KERR: -- partner. Thank you very much, Your
3 Honor.

4 THE COURT: Anybody who wants to be excused is
5 excused. Okay?

6 MR. KERR: Thank you, Your Honor.

7 THE COURT: All right, Mr. Goren, what's next? Mr.
8 Engelhardt.

9 MR. ENGELHARDT: Good morning, Your Honor. Stefan
10 Engelhardt of Morrison & Foerster on behalf of the debtors.
11 The next item on the agenda is a status conference on the
12 motion -- Ally Financial's motion for an order enforcing the
13 automatic stay relating to the Rothstein class action.

14 THE COURT: Let me just make myself a note.

15 (Pause)

16 THE COURT: Go ahead, Mr. Engelhardt.

17 MR. ENGELHARDT: Your Honor, if I may, we just
18 received word that unfortunately counsel for Rothstein got late
19 notification of this. Apparently there was an error in
20 communication. They only received notice of this through the
21 agenda that was filed. So they are on their way to court now.
22 So if we can defer --

23 THE COURT: Absolutely.

24 MR. ENGELHARDT: -- to the end. Thank you, Your
25 Honor. And to the extent that the communication was our fault,

1 we apologize to the Court.

2 THE COURT: And I -- I know I had one of my law clerks
3 call and ask it to be put on the agenda. It was late. And
4 ordinarily I try to give more notice than this. So I fully
5 understand.

6 MR. ENGELHARDT: Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. NEWTON: Good morning, Your Honor. James Newton
9 of Morrison & Foerster on behalf of the debtors. The next
10 items on the agenda are the continued matters related to
11 professionals for the foreclosure review. This is dockets
12 number 1357, 1426 and 1427 related to the retentions of
13 PricewaterhouseCoopers, Pepper Hamilton, and Hudson Cook.

14 As Your Honor is aware, the debtors have reached an
15 agreement on the terms of a -- and a settlement with the Fed
16 under which they would pay 230 million dollars in satisfaction
17 of their foreclosure review obligations. They put the money
18 into escrow, and work has been suspended.

19 This suspension is scheduled to last thirty days. And
20 we plan on filing a motion this week to seek approval of that
21 settlement. But if the motion is not approved or the thirty
22 days not extended, then we'll have to restart the review. And
23 so we've requested that the interim retentions be carried over
24 through July 26th. And we've circulated a proposed order to
25 chambers, counsel for the committee, Wilmington Trust and to

1 AFI as well.

2 THE COURT: Anybody else want to be heard on this?
3 That's fine. I'll grant the order.

4 MR. NEWTON: The next item on the agenda is a motion
5 for annulment of the automatic stay filed by RBS Citizens Bank.
6 This is docket number 3848. I'll cede the podium to counsel
7 for RBS.

8 THE COURT: Thank you.

9 MR. PERAL: Good morning, Your Honor. Eloy Peral with
10 Shapiro, DiCaro & Barak on behalf the movant, RBS Citizens
11 Bank. This is the motion pursuant to Section 362(d)(1) for
12 retroactive relief from the automatic stay to the point -- to
13 the date of a foreclosure sale of real property in Michigan
14 that was held July -- a post-petition sale that was held July
15 20th, 2012. The property was subsequently conveyed to Fannie
16 Mae.

17 RBS held or holds a first mortgage on the property,
18 and the debtors hold a junior mortgage on the property. Your
19 Honor, whether to --

20 THE COURT: Do you agree that the automatic stay was
21 in place and effective and barred foreclosure absent the stay
22 being lifted?

23 MR. PERAL: Yes, Your Honor. That's why we're seeking
24 an annulment of the stay to that date, in order to validate the
25 sale.

1 THE COURT: Do you have any authority for retroactive
2 annulment of the automatic stay?

3 MR. PERAL: Your Honor, there quite a bit of
4 authority. For example, In re Market XT, 428 B.R. 579. There
5 are numerous factors that courts apply in order to -- when
6 evaluating one of these motions. There is -- there are a
7 number of other cases that relate specifically to foreclosure
8 sales. These factors include whether the creditor had actual
9 or constructive knowledge, whether the debtor had acted in bad
10 faith, whether there was equity in the property for the estate,
11 if a property was necessary for an effective organization. In
12 this case a property would be the debtors' subordinate lien.
13 If the grounds for relief from the stay --

14 THE COURT: Any of those cases involve a case where
15 there are thousands of properties that were in various states
16 of foreclosure when the automatic stay went into place?

17 MR. PERAL: Your Honor --

18 THE COURT: The debtors' limited objection basically
19 was that this has the potential to work havoc in this case,
20 basically reopening or opening the door on many, many things
21 that have happened.

22 MR. PERAL: Your Honor, I understand the limited
23 objection. I don't know if any of those concerns would
24 actually materialize. The debtors are certainly free not
25 consent to this, as they consented to other requests for relief

1 from the stay through the procedures order. But --

2 THE COURT: They've consented, and the Court has
3 entered orders that have limited the effect of the stay or
4 lifted the stay, but not retroactively lifted the stay.

5 MR. PERAL: Right. But notwithstanding that procedure
6 order, Your Honor, it appears that based on these factors and
7 based on this authority, RBS should be granted the relief
8 requested --

9 THE COURT: Okay.

10 MR. PERAL: -- apart from the condition requested by
11 the debtors.

12 THE COURT: Okay. Thank you. Mr. Newton, do you want
13 to be heard?

14 MR. NEWTON: Yes, Your Honor.

15 Your Honor, James Newton of Morrison & Foerster on
16 behalf of the debtors.

17 I think you correctly recognized the issue. This is
18 not the only type of a -- the only request that we received
19 under the procedures order requesting retroactive relief, and
20 we've communicated the same concerns to each party that has
21 submitted those requests. And I think a couple other points to
22 make.

23 There is certainly no absolute right to -- or absolute
24 right to retroactive annulment of the automatic stay. We think
25 it's appropriate for Your Honor to condition the relief that's

1 being requested upon something that can protect the debtors
2 from the need to expend what could end up being a fairly large
3 amount of money in any number of proceedings in the future.

4 THE COURT: Such as?

5 MR. NEWTON: Well --

6 THE COURT: You're saying that I could, what, grant
7 them relief but condition it on what?

8 MR. NEWTON: Well, our limited relief as req -- and
9 we've actually requested informally that --

10 THE COURT: Look, unless the stay is annulled
11 retroactively, they got a problem. They went ahead and
12 foreclosed on property that was subject to the automatic stay.
13 So what are you --

14 MR. NEWTON: Correct.

15 THE COURT: -- describing?

16 MR. NEWTON: And in this situation, the debtors
17 actually don't have an interest in this property or the lien
18 that was on the property anymore. It was one of the liens that
19 was transferred over. And so as stated in our limited
20 objection, we wouldn't have any issue with prospective relief.

21 THE COURT: It doesn't do them any good.

22 MR. NEWTON: If there's going to be retroactive relief
23 then we think --

24 THE COURT: Prospective relief doesn't do them any
25 good. They've already foreclosed on the property.

1 MR. NEWTON: Well, then they could go and unwind and
2 reforeclose on the property. But if there's going to be any
3 retroactive relief, we think it's appropriate for the movant to
4 provide the debtors with some sort of indemnity. In case the
5 third-party borrower who is not present here is -- drags the
6 debtors into court on the basis of the improper post-petition
7 foreclosure.

8 THE COURT: All right. All right.

9 Counsel, what's your position about providing the
10 debtors with indemnity?

11 MR. PERAL: Your Honor, simply, I don't think it's
12 necessary. It would also be helpful if the debtor could --

13 THE COURT: Whether you think it's necessary or not --

14 MR. PERAL: Well, I -- we --

15 THE COURT: -- is your client prepared to provide --

16 MR. PERAL: -- we --

17 THE COURT: -- the debtors with an indemnity against
18 any loss, harm, damages, attorneys' fees that result if this
19 Court retroactively annuls the automatic stay?

20 MR. PERAL: No, Your Honor.

21 THE COURT: Okay. Motion's denied.

22 I considered all the facts and circumstances of the
23 case and in the exercise of the Court's discretion the Court
24 determines that it would be inappropriate in these
25 circumstances to retroactively annul the automatic stay.

1 If RBS had been prepared to provide the debtor -- it
2 is their own conduct that the existence of the automatic stay
3 was open and notorious and available to everyone. RBS went
4 ahead, conducted a foreclosure sale in the face of the
5 automatic stay despite the debtors' interest in the property.
6 The automatic stay -- counsel has acknowledged, the automatic
7 stay applied. The debtors should not be at any risk of any
8 harm. If RBS is unwilling to provide the debtor with a
9 satisfactory indemnity against any harm, loss, attorneys' fees,
10 et cetera, under all of the circumstances the Court denies the
11 motion.

12 Mr. Newton, prepare an order that indicates that for
13 the reasons stated on the record the motion is denied.

14 MR. NEWTON: Will do so, Your Honor.

15 THE COURT: All right. If subsequently, if -- the
16 only thing I would say, subsequently before you send the order
17 if RBS wants to reconsider the issue of indemnity you can work
18 out a form of consent order that's satisfactory and I'll look
19 at it. But that's -- when I get your order it's getting
20 entered so it's something that's going to have to happen very
21 quickly.

22 MR. NEWTON: All right. Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. NEWTON: I'll turn the podium over the Paul
25 Galante.

1 THE COURT: Okay.

2 MR. GALANTE: Good morning, Your Honor. Paul Galante
3 from Morrison & Foerster on behalf of the debtor/defendant here
4 for the --

5 THE COURT: I haven't seen you here before.

6 MR. GALANTE: No, first time. It's for the case
7 status conference in the adversary proceeding filed by Bruce
8 DeMustchine. I'm not sure if Mr. DeMustchine's counsel is on
9 the phone.

10 THE COURT: Is anybody on the phone for De -- Mr.
11 DeMustchine? No. Go ahead.

12 MR. GALANTE: I can give you a brief --

13 THE COURT: So what's the -- has the First Circuit
14 done anything yet?

15 MR. GALANTE: First Circuit hasn't done anything yet.
16 It's still pending.

17 THE COURT: Is it fully briefed in the First Circuit?

18 MR. GALANTE: It is fully briefed in the First
19 Circuit.

20 THE COURT: Has an argument been scheduled?

21 MR. GALANTE: I do not believe so. As far as the
22 adversary proceeding, the current status is both sides have
23 served discovery requests; we're in the process of gathering
24 documents and we should serve those responses to the document
25 request and the interrogatories next week and I believe they

1 will be doing the same in response to our requests. And that's
2 the current status of the case.

3 THE COURT: Okay.

4 MR. GALANTE: There were some early settlement
5 discussions. Those have somewhat broken down but --

6 THE COURT: Have you considered mediation? Not with
7 Judge Peck.

8 MR. MASON: Hello, Your Honor?

9 THE COURT: Yes.

10 MR. MASON: Hi. This is Attorney Mason. I'm sorry;
11 we had some type of a glitch with the phone.

12 THE COURT: Oh, okay. Go ahead.

13 MR. MASON: I'm representing Mr. DeMustchine.

14 THE COURT: Go ahead. Let me hear from you.

15 MR. MASON: Yes, I agree with Attorney Galante about
16 the status of the case. We've had some brief discussions about
17 the -- settling the case. And to be honest with you, Your
18 Honor, we'd really like to settle this case. Right now, it's
19 at the First Circuit Court of Appeals.

20 One of the big issues is whether or not the -- whether
21 RAHI has ever owned -- has ever owned a mortgage for this
22 property.

23 What's happened, Your Honor, is that RAHI apparently
24 has sold the note and the mortgage to another company. So
25 currently, it's pursuing this action without having any

1 ability -- in the First Circuit Court of Appeals without having
2 any right to pursue this action -- apparently having no right
3 to pursue this action. So part --

4 THE COURT: Well, look if --

5 MR. MASON: -- of the reason we why thought --

6 THE COURT: Okay. Let me ask you this, if they had
7 standing in the district court, is that affected by if they've
8 sold the note subsequently? I mean, look, I'm -- if I could be
9 euphemistic about it, this is one way the debtor really screwed
10 up or the debtors' prior counsel -- do I have the right case?

11 MR. GALANTE: You have the right case.

12 MR. MASON: Yes, Your Honor.

13 THE COURT: Okay. And this is their Hail Mary pass to
14 hope that the First Circuit bails them out, speaking
15 euphemistically. Is that a fair statement, counsel?

16 MR. GALANTE: It's fair.

17 MR. MASON: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. MASON: I'd have to say so.

20 THE COURT: All right.

21 So I -- look, I'm sure -- are all the briefs in the
22 First Circuit or have you moved to dismiss the appeal on the
23 grounds they don't have standing to appeal or --

24 MR. MASON: Yes, Your Honor, I have.

25 THE COURT: Okay. Is everything fully briefed in the

1 First Circuit?

2 MR. MASON: I believe so, Your Honor. Yes.

3 THE COURT: Okay. Have the two of you considered
4 trying to mediate? I don't know, I'm not -- look, either
5 you'll settle or you won't settle. This isn't all that
6 complicated, frankly, unless you need a mediator but --

7 MR. MASON: Your Honor, pretty much what we want is
8 pretty simple. All we want is we want the appeal to the
9 judgment in the first district court to be withdrawn and for
10 some attorneys' fees to be paid. It doesn't seem like the --
11 RAHI is willing to negotiate this or even talk about
12 withdrawing this -- withdrawing this whole appeal.

13 THE COURT: So the Second Circuit has a mediation
14 program. I don't know whether the First Circuit has one or
15 not. Have either of you explored that?

16 MR. GALANTE: We have, Your Honor.

17 MR. MASON: It does, Your Honor. When the appeal was
18 originally filed, the -- we were supposed to have a mediation
19 conference. However, there was a stay put on the case so that
20 was never -- that was never held. There's a retired judge who
21 basically is the settlement counsel for the First Circuit Court
22 of Appeals.

23 THE COURT: So what I would -- look, here -- I lifted
24 the stay so the appeal could go forward. I'm going to direct
25 counsel to endeavor to get the First Circuit's mediation

1 rescheduled. They'll either do it or they won't but I can't
2 believe you're pursuing this case; but okay, that's fine. But
3 try and get this scheduled for mediation in the First Circuit.
4 I know the Second Circuit's program is quite effective and I
5 assume, hopefully, the First Circuit's program is similarly
6 effective.

7 If you don't settle it, you don't settle it and if
8 they made a motion to dismiss the appeal, the Court will decide
9 it -- either grant it or deny it.

10 MR. MASON: Right.

11 THE COURT: But in terms of the schedule before me,
12 everything has proceeded apace. Is that correct?

13 MR. GALANTE: It has.

14 THE COURT: Okay.

15 MR. MASON: Yes, Your Honor. The only thing is that
16 we may ask for a brief extension because I'm in Boston and the
17 attorneys who are representing RAHI are in New York so there's
18 some logistical difficulties. But we have agreement on
19 discovery. We have agreement, at least, on my clients being
20 deposed. So we seem to be moving along.

21 THE COURT: Okay. In the case management and
22 scheduling order that gets entered, I didn't go back to look at
23 this one -- actually, I did look at this one specifically -- in
24 the last paragraph, it has a provision that the parties can't
25 unilaterally agree to extend the schedule and if anybody's

1 going to seek to extend it, they have to make an application --
2 and it can be by letter -- more than five days before the dates
3 expire. I'll just tell you now, I'm not inflexible. If -- you
4 need to establish that there's been a good faith effort to
5 conduct all discovery and there are a few items that remain to
6 be done and because you're in Boston and they're here and if
7 people -- witnesses are on vacation or whatever. But in order
8 for me to extend the schedule, the parties have to demonstrate
9 that they've made a good-faith effort to complete discovery but
10 there are a few things that need to be done. In which case, I
11 ordinarily will extend the deadline. Okay? And you can do it
12 by letter.

13 MR. MASON: Thank you, Your Honor.

14 THE COURT: I don't require a formal motion. You can
15 do it by letters.

16 MR. MASON: Okay.

17 MR. GALANTE: Understood.

18 THE COURT: And --

19 MR. MASON: Thank you very much, Your Honor.

20 THE COURT: -- you can do it by letter and if -- I
21 need the letter even if the two of you agree; but if you're
22 requesting an extension, you ought to indicate what the
23 opposing counsel's position is on it. If they consent to it,
24 I'll certainly take that into account. You still need to
25 demonstrate to me that the parties have made a good-faith

1 effort to complete their discovery and there are some things
2 that need to be done yet. Okay?

3 MR. MASON: Understood, Your Honor,

4 THE COURT: All right. Thank you very much.

5 So what I would like you to do, Mr. Newton or Mr.
6 Goren, get this back on an agenda for September just for a
7 status report. And I do want to find out whether they've --
8 whether the parties have endeavored to get the First Circuit
9 mediation in place, either have completed it or have a date or
10 were turned down in requesting it. Okay? But let's get it on
11 for a status conference in September.

12 MR. NEWTON: Will do.

13 THE COURT: Okay? Thank you very much.

14 MR. NEWTON: Okay.

15 MR. MASON: Thank you.

16 THE COURT: Thank you very much. And you're excused
17 from the phone if you want to be. Okay?

18 MR. MASON: Thank you, Your Honor.

19 THE COURT: All right. Mr. Newton or Mr. Goren are we
20 still waiting for the Rothstein plaintiff's counsel, Mr.
21 Engelhardt?

22 MR. ENGELHARDT: Yes, Your Honor. Stefan Engelhardt.

23 It appears that the Rothstein counsel has not arrived
24 yet. We received an e-mail at approximately 10:40 that he was
25 on his way, would be here momentarily but --

1 THE COURT: So look, let's -- is there anything else
2 on the agenda for today, Mr. Goren.

3 MR. GOREN: That's it, Your Honor.

4 THE COURT: Okay. So anybody wants to be excused is
5 excused. Let's take a recess until 11:30. Knock on my
6 chambers door and let me -- in fact, we'll -- let me know if
7 they're here by then. We'll definitely break until 11:30,
8 though. Okay. So our ECRO operator doesn't have to sit around
9 waiting. Okay?

10 MR. GOREN: Thank you very much, Your Honor.

11 THE COURT: All right. We're in recess. Thank you.

12 (Recess from 11:12 a.m. until 11:33 a.m.)

13 THE COURT: All right. Please be seated. We're back
14 on the record in Residential Capital number 12-12020. Mr.
15 Engelhardt.

16 MR. ENGELHARDT: Hello again, Your Honor, Stefan
17 Engelhardt of Morrison & Foerster on behalf of the debtors.
18 Your Honor, we're here on docket number 2511 status conference
19 on the motion by Ally Financial for an order enforcing the
20 automatic stay relating to the Rothstein class action. After
21 consultation with counsel for Kirkland, I respectfully -- as
22 it's their motion, I'll turn the podium over to Mr. Schrock.

23 THE COURT: Thank you. Who's appearing on the
24 Rothstein -- for the plaintiffs?

25 MR. STRAUSS: I am.

1 THE COURT: Why don't you come on up?

2 MR. STRAUSS: Thank you, Your Honor.

3 MR. SCHROCK: Good morning, Your Honor. Ray Schrock.

4 THE COURT: Let him make his appearance.

5 MR. SCHROCK: Sure.

6 MR. STRAUSS: Mark Strauss from Kirby McInerney --

7 THE COURT: Okay.

8 MR. STRAUSS: -- for the Rothstein plaintiffs.

9 THE COURT: And, Mr. Strauss, let me apologize to you
10 because this was added to the agenda late, and I ordinarily try
11 not to do that but when I -- I had your letter and Mr.
12 Schrock's letter and I hadn't said anything and then I looked
13 at the agenda for today and figured well, let's add it on. So
14 I apologize to you. I appreciate your coming down; and next
15 time if we do it again, I'll make sure I give you more notice.
16 Okay?

17 MR. STRAUSS: Thank you, Your Honor.

18 THE COURT: Okay. Go ahead, Mr. Schrock.

19 MR. SCHROCK: Okay. Thank you again, Your Honor.

20 Again, good morning. For the record, Ray Schrock of Kirkland &
21 Ellis on behalf of AFI and Ally Bank.

22 Your Honor, we're here on a status conference. I know
23 Your Honor has received letters from Mr. Strauss and myself. I
24 think the sole nature of the disagreement at the moment is just
25 whether or not the Court should make a determination at this

1 stage in the cases in light of the plan support agreement, the
2 pending plan, as to whether or not the Rothstein causes of
3 action are property of the estate. And after conferring with
4 committee counsel, conferring with the debtors' counsel, our
5 concern, and we saw this before and we let the district court
6 and the stipulation back in December know that there may be an
7 amendment to the motion to seek to extend the automatic stay.
8 Our sole concern is --

9 THE COURT: Who has it in the district court?

10 MR. SCHROCK: Judge Nathan.

11 THE COURT: All right.

12 MR. SCHROCK: Our concern, Your Honor, is that these
13 are tricky issues around what's property of the estate. We
14 wanted to raise the issue because we did see the complaint was
15 amended to add Ally post-petition, and there's been
16 subsequently a second amendment. But this has law by case
17 implications that goes directly to the debtor release as well
18 as the third-party release in the cases. I believe Mr. Strauss
19 can speak for himself but I believe there's not a fundamental
20 disagreement around staying the matter through the pendency of
21 the action. Our belief was --

22 THE COURT: Through the pendency of --

23 MR. SCHROCK: Pendency of the Chapter 11, at least,
24 for the near term. But if we make this determination now, we'd
25 rather do it in the context of confirmation when Your Honor can

1 consider that this action -- this particular question is not
2 just applicable to Mr. Rothstein and his action, it's
3 applicable to several other lawsuits that are pending in this
4 case. And so if we make a determination here, how is that
5 going to affect all of the other actions and the scope of the
6 releases that are contemplated under the plan?

7 THE COURT: Okay. Mr. Strauss?

8 MR. STRAUSS: Judge, we -- there's a fairly narrow
9 issue to be resolved, and that is whether the claims that we've
10 alleged against Ally Bank --

11 THE COURT: East for you to say.

12 MR. STRAUSS: -- are direct or derivative. And this
13 is an issue that Mr. Schrock's clients raised in their own
14 motion that was filed in December of 2012. We spent a lot of
15 time briefing it. All the parties have weighed in; and I --
16 the matter is ripe for determination. This is a --

17 THE COURT: Let me -- tell me who are the defendants
18 in the district court and what's the status of the district
19 court action?

20 MR. STRAUSS: The status of the district court action
21 is that there are motions to dismiss that are fully briefed and
22 pending.

23 THE COURT: Have they been argued?

24 MR. STRAUSS: They have not been argued yet.

25 The defendants in the district court are Balboa

1 Insurance Company, Meritplan Insurance Company and Newport
2 Management --

3 THE COURT: This is the force-placed insurance issue?

4 MR. STRAUSS: Correct. And we've also named Ally Bank
5 and Ally Financial. So those are the defendants. The claims
6 are based upon RICO and RESPA and there are a handful of state
7 law claims as well, but the main claims are RICO and RESPA.

8 THE COURT: Has discovery been proceeding while the
9 motions to dismiss are pending?

10 MR. STRAUSS: Limited discovery has been proceeding
11 against Balboa.

12 THE COURT: And has Judge Nathan entered a scheduling
13 order in the case?

14 MR. STRAUSS: No. We see this as a -- the resolution
15 of our derivative/direct issue as a threshold issue for us
16 going into confirmation. We -- if the claims are, as they
17 allege, derivative then we don't have to raise any issues as to
18 the third-party releases, otherwise we do. So we think that it
19 will streamline the litigation once we get to confirmation.
20 And as I said, all of the issues have been teased out in the
21 papers. Everything is ready to be resolved.

22 THE COURT: Everything other than me.

23 MR. STRAUSS: Yes.

24 THE COURT: And I only say that half in jest. I don't
25 know the extent to which you're following what's going on in

1 the ResCap case. There is a lot of stuff scheduled over the
2 next few months; it's very busy.

3 MR. STRAUSS: I noticed. I'm sure, Your Honor. I'm
4 sure that chambers is bustling with activity. But this is a
5 motion that was brought on by Ally.

6 THE COURT: Yes, I understand.

7 MR. STRAUSS: So --

8 THE COURT: Well, I'm not -- and you'll correct me or
9 Mr. Schrock will correct me but the issue of whether I grant a
10 105 stay doesn't hinge on whether the claims are direct or
11 derivative. Okay. So earlier in this case, I entered a stay
12 of quite a few actions that named AFI where I don't really
13 think there was -- I don't remember this issue being teed up in
14 terms of that these are derivative claims. It was even
15 assuming that they're -- if they're derivative claims, end of
16 subject -- subject to appeal, right. But if they're derivative
17 claims, you just can't assert them, they belong to the debtor,
18 et cetera. But if they're -- even if they're direct claims, if
19 AFI has a right -- has asserted a right to indemnification
20 against the debtor, it affects the res of the estate, the
21 property of the estate. And the Second Circuit's most recent
22 decision on this is the Quigley case, and it would clearly
23 indicate that the bankruptcy court has the power under 105 to
24 stay actions against nondebtors if it would affect the property
25 of the estate; if there's common insurance, if there's a right

1 to indemnification. So do you disagree with that?

2 MR. STRAUSS: Unless I'm incorrect, the stays that the
3 Court -- the 105 stays that the Court granted earlier in the
4 case weren't open-ended.

5 THE COURT: They weren't.

6 MR. STRAUSS: They expired. Some of them were
7 consensually extended.

8 THE COURT: I had -- there was one that I actually had
9 that I heard evidence, Western something, I can't remember
10 the --

11 MR. STRAUSS: Western & Southern.

12 THE COURT: -- name of it now -- where they were
13 perfectly entitled not to consent, they didn't consent. I
14 had -- there was an evidentiary hearing and I delivered a
15 ruling from the bench. I read a decision into the record, and
16 I'm sure there's a transcript of it. But all the others
17 consented. They were, on several occasions they were -- the
18 stays were extended by stipulation.

19 In -- I've usually -- I'm not making a decision on
20 this now, okay, but I mean I believe that with restrictions on
21 the exercises of discretion, limits to the exercises of
22 discretion, the bankruptcy court has discretion in the
23 appropriate circumstances to extend -- to stay even direct
24 claims against a nondebtor if it would affect the property of
25 the estate, certainly, through confirmation.

1 I've usually done it in chunks, okay. So I wrote an
2 opinion in a case called McHale v. Alvarez, In re the 1031 Tax
3 Group, and in that case I did go through the analysis of which
4 were direct claims and which were derivative claims. Some were
5 derivative, and I said you're just -- you plaintiffs are batter
6 out, you can't pursue those. Some of your claims, as alleged
7 in the state court complaints in Colorado, are direct claims.
8 And as to those, I extended a 105 stay, okay. I did it for --
9 my practice has been to do it for finite periods of time,
10 because it was earlier in the life of that case, I didn't know
11 how quickly other things were going to progress, I could always
12 extend the stay, and I think I did and it all ultimately went
13 away. The case -- everything got resolved.

14 So I'm not sure that even if I go ahead and hear the
15 motion now that I would have to decide the issue of whether
16 your claims are direct or derivative. I could decide that even
17 if they are direct, I, nevertheless, extend a stay through
18 confirmation. We now have a proposed plan on file, there's a
19 plan support agreement, you know about all of that.

20 I am very mindful of and respectful of the proceedings
21 in other courts. So when the matter came before me earlier in
22 ResCap about staying stayed in federal court cases elsewhere, I
23 asked for the permission of counsel to speak with -- not
24 permission, I asked them does anybody have any objections to me
25 speaking with the judges who had those matters. Ao I'm going

1 to ask you the same que -- I've not spoken to Judge Nathan
2 about it and I would like to speak to Judge Nathan about it.
3 And I'll ask both you, Mr. Strauss and Mr. Schrock, whether you
4 have any objections to my speaking with Judge Nathan about it?

5 MR. SCHROCK: We have no objection.

6 MR. STRAUSS: No objection.

7 THE COURT: Okay. I have two basic problems right
8 now. I have got just an enormous amount going on so -- you're
9 entitled, I'm not saying you're not entitled to a decision but
10 I'm -- the point that I'm not clear -- you may want a decision
11 now as to whether these are direct or derivative claims, and I
12 may just not decide that. I may just decide for now I don't
13 have to decide whether it's direct or derivative because I'm
14 going to go ahead and extend a stay under 105 because sure, it
15 may force you to come in and object to confirmation to the
16 third-party nondebtor releases that are part of the plan. If
17 you do you do. I mean, I can't -- I'm not ruling now, I'm
18 just -- I'd like to talk to Judge Nathan. I don't want to
19 screw up her case.

20 When you say it's -- limited discovery is -- well, for
21 instance, Mr. Schrock, have you moved to dismiss?

22 MR. SCHROCK: No, we haven't, Your Honor. We have the
23 stay. I mean there's a stipulation in place in the district
24 court that stays all of the actions against the Ally nondebtors
25 until this Court makes a ruling on whether or not the stay is

1 applicable or whether or not the -- if the debtor makes a
2 motion to amend the relief to extend the stay under 105, in
3 that case, whether or not this Court would rule to extend the
4 stay.

5 THE COURT: So do you have -- your motion to extend
6 the stay is it dependent on whether the claims are direct or
7 derivative?

8 MR. SCHROCK: No. Your Honor, we initially -- just to
9 back up -- in December of last year after Ally -- there was an
10 initial action filed against -- I'm just going to say ResCap in
11 short -- the petitions were filed. Ally and Ally Bank were
12 added in September. We discussed these issues with the
13 debtors, the committee; brought to their attention that,
14 listen, some of these actions appear to be estate actions. We
15 filed the motion, entered the stipulation in the district court
16 to stop the actions. And subsequent to that, we've been
17 working with the debtors. The debtors have joined the motion.
18 The committee is now joining the motion. We have the plan
19 support agreement. And all of us on the plan support side have
20 said listen, now that we have this plan on file, we really
21 don't need a determination. We were just a nondebtor; that's
22 why we moved to enforce the stay, because moving to extend the
23 stay as a nondebtor probably wouldn't have been the most
24 successful tactic in terms of bringing a motion before the
25 Court.

1 But we do not need a determination on whether it's
2 direct or derivative. The committee has said in their papers
3 they'd rather just have the stay extended. We had the colloquy
4 with the Court at the last status conference. We're simply
5 seeking to have the motion amended to reflect the relief that
6 we really want which is the stay extended.

7 THE COURT: Mr. Strauss?

8 MR. STRAUSS: The --

9 THE COURT: And here's what I'd be inclined to do.

10 MR. STRAUSS: The --

11 THE COURT: Go ahead.

12 MR. STRAUSS: Just to correct, the stipulation only
13 covers motions made prior to the end of December of 2012. So
14 the stipulation -- if Mr. Schrock amended his papers to seek
15 105 --

16 THE COURT: Um-hum.

17 MR. STRAUSS: -- that wouldn't fall under the
18 stipulation.

19 THE COURT: Okay. Well --

20 MR. STRAUSS: Just his motion to --

21 THE COURT: Right.

22 MR. STRAUSS: -- on the automatic stay is under the
23 stipulation.

24 THE COURT: So, Mr. Schrock, I am going to permit you
25 to amend your motion --

1 MR. SCHROCK: Yes.

2 THE COURT: -- to add 105 -- to extend the stay, to --
3 it's not ex -- to stay the action against AFI and Ally Bank
4 under Section 105. Okay. So that -- you asked that in your
5 letter and yes I want to --

6 MR. SCHROCK: And, Your Honor -- sorry to interrupt --

7 THE COURT: No, go ahead.

8 MR. SCHROCK: -- but and I don't think there's an
9 objection on the part of the Rothstein plaintiffs. He's
10 correct as to the wording in the stay but there's not an
11 objection to continuing the stay at this time.

12 THE COURT: But I do want to talk to Judge Nathan.

13 MR. SCHROCK: Okay.

14 THE COURT: What's Balboa been doing in all of this,
15 Mr. Strauss?

16 MR. STRAUSS: Balboa has been taking the position that
17 the bankruptcy does not affect their claims, the claims that we
18 have against them, and they've been litigating the case.

19 THE COURT: Okay. So how many cases, because this
20 is -- yours is not the only one against Balboa on a force --
21 and some of the debtors are nondebtor affiliates. Do you know
22 how many cases there are?

23 MR. STRAUSS: As to --

24 THE COURT: Because I have one other -- this issue has
25 come up before me --

1 MR. STRAUSS: -- as to force-placed insurance, I
2 believe that this is the only case. There was another case
3 involving the debtors and Balboa and a different type of
4 insurance in Florida that recently settled.

5 THE COURT: I thought that was -- it's settled?

6 MR. STRAUSS: It's settled but I believe that that was
7 only estate class and only related --

8 THE COURT: But I thought it was force-placed
9 insurance?

10 MR. STRAUSS: It was a different type of force-placed
11 insurance. This is general hazard -- our case involves general
12 hazard insurance, and that was a windstorm case and that only
13 affected a few thousand bar orders. It was at a very specific
14 type of insurance that was obtained for waterfront communities.

15 THE COURT: Mr. Engelhardt, what's the debtors'
16 position to any of this?

17 MR. ENGELHARDT: Your Honor, the debtor would echo
18 Ally's position here. It appears to the debtors that the
19 Rothstein plaintiffs have agreed to a stay through
20 confirmation. We don't think whether the --

21 THE COURT: I didn't hear that.

22 MR. ENGELHARDT: And I believe it's in your -- in the
23 correspondence to Your Honor that they sent.

24 THE COURT: Is that correct, Mr. Strauss? Do you
25 consent to a stay through confirmation?

1 MR. STRAUSS: We offered that for an agreement to a
2 hearing date. If we don't have a hearing date --

3 THE COURT: Come up to the microphone just so I can --

4 MR. STRAUSS: Sorry. We offered that to the debtors
5 and to Ally as a quid pro quo for an agreement on a hearing
6 date for the issue of derivative versus direct.

7 We think resolving that issue is important
8 irrespective of what happens between now and confirmation in
9 terms of whether our case is stayed or not stayed, because we
10 need to -- we would like to get a resolution of that so we know
11 whether we should be objecting to the releases or not.

12 THE COURT: Of course, if you object to the releases,
13 you're going to be joining a not particularly exclusive or
14 select club. I've heard lots of complaints about the releases,
15 so you'll be -- I'm not suggesting that the objections won't be
16 well-taken, but I mean in opposition to approval of the PSA,
17 there were many objections that were filed, many of which
18 raised the third-party nondebtor releases. So you're not going
19 to be injecting an issue that's novel.

20 MR. STRAUSS: Well, I think we have -- we have unique
21 claims. We have the only --

22 THE COURT: Well, everybody thinks they have unique
23 claims.

24 MR. STRAUSS: Sorry?

25 THE COURT: Everybody thinks they have unique claims.

1 MR. STRAUSS: And the claims that we're asserting,
2 they're respondeat superior claims against Ally Bank, and Ally
3 Bank is not a parent company. This is not remotely a veil-
4 piercing type of a claim. Ally Bank is, at best, a cousin
5 company.

6 THE COURT: Mr. Mannal?

7 MR. MANNAL: Your Honor, if I may? Doug Mannal on
8 behalf of the creditors committee.

9 Your Honor, I rise only to add we'd like to give peace
10 a chance, we'd like to sit down with the Rothstein plaintiff's
11 counsel and see if there isn't something we can work out with
12 respect to their claims. We recently filed a plan and
13 disclosure statement that discusses treatment of creditors of
14 GMAC-M which I believe the original complaint identified them
15 as the actual defendant here. So we'd like, over the course of
16 the next few weeks, to sit down with them and try to work
17 things out.

18 If that's not successful, we have the plan. If the
19 plan is not confirmed then we can -- there are next steps. We
20 don't see this issue of direct or derivative as being a
21 requirement or a condition to plan confirmation.

22 THE COURT: Okay. All right. Mr. Strauss, are you --
23 I'm confident you'll be willing to sit down with the debtor and
24 the committee to see whether you can reach a satisfactory
25 resolution; you either will or you won't but are you prepared

1 to do that?

2 MR. STRAUSS: Yes, we are, Judge.

3 THE COURT: Okay.

4 MR. STRAUSS: But we don't think that that should
5 forestall a hearing --

6 THE COURT: Well --

7 MR. STRAUSS: -- on this issue. The debtors were free
8 to approach us to negotiate something for months and months and
9 we haven't been invited.

10 THE COURT: They were engaged in a -- for about five
11 or six months in intense mediation that didn't involve
12 everybody. Okay. Many parties -- it was a very difficult,
13 tough mediation supervised by my colleague, Judge Peck, and
14 they reached the plan support agreement with two term sheets
15 that have now been approved. So don't be insulted that they
16 didn't get to you yet. The issue is whether they're prepared
17 to sit down with you now. Mr. Engelhardt and Mr. Goren, I
18 assume you are.

19 MR. GOREN: Yes, Your Honor.

20 THE COURT: Okay. What -- look, I'm -- between now
21 and the end of July, I've got no time for anything. I'm on
22 vacation from the end of July through middle of August, and I
23 come back to a very heavy ResCap schedule. So it would be my
24 preference that you try to spend the next couple of weeks
25 seeing whether you can resolve your issues. You will or you

1 won't. Okay. If you can't, then, I think that Mr. Schrock
2 should file an amended motion. Okay. I will speak with Judge
3 Nathan before I leave on vacation sometime within the next two
4 weeks; I'll speak with her.

5 And I'll hear the motion, but no guarantees I'm going
6 to decide the -- your direct/derivative issue because I don't
7 have to. All right. I'll see, but I haven't gone back to
8 review the papers. Okay. And I want to see what any amended
9 motion, if necessary, looks like. But I'm going to have --
10 assuming this case moves to confirmation, we just set a
11 disclosure statement hearing -- assuming the case moves to
12 confirmation, there's going to be an issue about the validity
13 of the third-party nondebtor releases. That's going to be --
14 and that's going to happen no matter what. So here's what I
15 would ask you to do.

16 Confer with the other counsel. Some -- within two
17 weeks, somebody send me a status letter to let me know -- I
18 don't want to know details of settlement negotiations,
19 obviously, but where things stand. If you can't reach an
20 agreement or agree to continue talking about it, Mr. Schrock,
21 file your amended motion.

22 MR. SCHROCK: Okay. Thank you, Your Honor.

23 THE COURT: It's -- in terms of giving you a hearing
24 date, I may be able to give you a hearing date in late August.
25 I mean I already have two days scheduled for the FGIC

1 settlement, contested settlement, August 16th and 19th, it's a
2 Friday and a Monday right after I get back from vacation, and I
3 just -- the calendar's pretty crowded.

4 You're entitled -- Mr. Schrock is entitled to a
5 decision on his motion. It may not be the decision you want in
6 the sense that it may not get to the issue of whether these
7 claims are direct -- your claims are direct or derivative but
8 we'll just -- we'll take it one step at a time. Okay?

9 MR. SCHROCK: Thank you.

10 THE COURT: All right. In the meantime, I will talk
11 with Judge Nathan. We won't talk about the merits but I do
12 want to talk -- get a better understanding of the status of her
13 case and tell me -- let me tell her the status of my case.
14 Okay?

15 MR. STRAUSS: Okay. Thank you.

16 THE COURT: And again, I apologize to you that you got
17 such late notice but you managed to get down here anyway.

18 MR. STRAUSS: No apologies necessary.

19 THE COURT: Okay. Thank you very much.

20 IN UNISON: Thank you, Your Honor.

21 (Whereupon these proceedings were concluded at 11:59 AM)

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I N D E X

RULINGS

	Page	Line
The Court will enter an order not permitting	35	9
use of 9019 discovery with FGIC in other		
proceedings.		
The parties will submit an order regarding	35	21
confidentiality on FGIC discovery		
Motion to extend retentions granted.	50	4
Motion by RBS to annul the	54	21
automatic stay denied		

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

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Date: July 11, 2013